

REMARKS

The present communication responds to the Office Action dated May 16, 2006. In that Office Action, it was indicated that restriction was required. The Examiner identified two species of the claimed invention:

Species I (claims 21-28); and

Species II (claims 29- 37).

In response to the restriction requirement, Applicant elects the invention of Species II (claims 29-37) drawn to a lumen occlusion device comprising a plurality of openings. Claims 21-28 are canceled from the application.

The Examiner has further requested that Applicant resubmit the non-patent literature disclosed in the Information Disclosure Statement submitted on January 10, 2005. Applicant has enclosed copies of the documents requested herewith and respectfully requests that the Examiner consider, and sign off on, the documents.

Finally, in the Office Action, the Examiner rejected claims 29-37 under 35 U.S.C. § 103(a). Claims 29-37 are pending. In view of the following remarks, reconsideration is requested.

Rejections Under 35 U.S.C. § 103

Claims 29 and 34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Lee (U.S. Patent 5,292,332) in view of Clark et al. (U.S. Patent 5,259,835). This rejection is traversed for at least the following reasons.

Claims 29 Is Not Made Obvious by Lee in View of Clark

Claim 29 is directed to a lumen occlusion device. The lumen occlusion device comprises, in part, “a plug defining a plurality of openings” and further comprises, in part, “a biological bonding agent for being moved through the openings.”

Neither Lee nor Clark, alone or in combination, disclose or suggest the invention of claim 29. As the Examiner points out, Lee fails to teach or suggest a plug having a plurality of openings or a biological bonding agent for being moved through the openings. Rather, Lee discloses a method and device for closing a puncture in a wall of an artery. (*Lee, Abstract*) Lee, in fact, teaches away from lumen occlusion. The disclosure in Lee is directed toward a medical device for percutaneously sealing a puncture in an artery *without* impeding blood flow within the lumen. (*Lee, col. 1, ll. 8-12*).

Clark fails to remedy the deficiencies of Lee. Clark discloses an external wound closure device employing a porous bonding member which receives a flowable adhesive for adhering the bonding member to the skin of the patient. (*Clark, Abstract*). Clark does not disclose or suggest a lumen occlusion device comprising “a plug defining a plurality of openings” and “a biological bonding agent for being moved through the openings.” Clark merely discloses a particular embodiment of adhesive bandages.

Thus, for at least these reasons, neither Lee nor Clark, alone or in combination, disclose or suggest the invention of claim 29. Accordingly, reconsideration and withdrawal of the rejection is requested.

Claims 34 Is Not Made Obvious by Lee in View of Clark

Claim 34 is directed to a method of occluding a body lumen. The method comprises, in part, “providing a device comprising a plugging means . . . , wherein the plugging means has a plurality of openings” and further comprises, in part, “conveying the biphasic material to the plugging means; moving said biphasic material through the openings of said plugging means to fix said plugging means relative to the interior wall of said body lumen.”

Neither Lee nor Clark, alone or in combination, disclose or suggest the invention of claim 34. As discussed above, Lee discloses a method and device for closing a puncture in a wall of an artery and, in fact, teaches away from lumen occlusion. (*Lee, Abstract; col. 1, ll. 8-12*). Furthermore, Clark discloses an external wound closure device employing a porous bonding member which receives a flowable adhesive for adhering the bonding member to the skin of the patient. (*Clark, Abstract*). That is, Clark merely discloses a particular embodiment of adhesive

bandages. Neither Lee nor Clark disclose or suggest a method of occluding a body lumen comprising “providing a device comprising a plugging means . . . , wherein the plugging means has a plurality of openings” and “conveying the biphasic material to the plugging means; moving said biphasic material through the openings of said plugging means to fix said plugging means relative to the interior wall of said body lumen.”

Accordingly, reconsideration and withdrawal of the rejection is requested.

Claims 30-33 and 35-37 Are Not Made Obvious by Lee and Clark, in Further View of Wallace

Claims 30-33 and 35-37 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Lee and Clark, as applied to claims 29 and 34, and further in view of Wallace et al. (U.S. Patent 6,585,754). Applicant traverses the rejection for at least the following reasons.

As noted above, neither claim 29, from which claims 30-33 depend, and claim 34, from which claims 35-37 depend, are made obvious by Lee in view of Clark. Neither Lee nor Clark, alone or in combination, disclose or suggest a method or device for body lumen occlusion.

Wallace fails to remedy the deficiencies of Lee and Clark. Wallace discloses compositions comprising absorbable implantable vaso-occlusive members. (*Wallace, Abstract*). Wallace does not disclose or suggest a lumen occlusion device comprising “a plug defining a plurality of openings” nor “a biological bonding agent for being moved through the openings,” as recited in claim 29. Wallace further does not disclose or suggest a method of occluding a body lumen comprising “providing a device comprising a plugging means . . . , wherein the plugging means has a plurality of openings” nor “conveying the biphasic material to the plugging means; moving said biphasic material through the openings of said plugging means to fix said plugging means relative to the interior wall of said body lumen,” as recited in claim 34.

Furthermore, there is no teaching, suggestion, or motivation to make the combination asserted by the Examiner. The mere fact that the implantable vaso-occlusive member in Wallace is made of absorbable material does not provide the incentive to combine with another reference solely to add absorbable material to the list of compositions in the other reference.

Accordingly, reconsideration and withdrawal of the rejection is requested.

CONCLUSION

No additional claim fees should be generated by this paper, but a petition to extend the time to respond by one month is submitted herewith. However, the Commissioner is hereby authorized to charge any fee deficiency associated with this paper or the petition to Deposit Account No. 04-1420.

The application now stands in allowable form, and reconsideration and allowance are requested.

Respectfully submitted,

DORSEY & WHITNEY LLP
Customer Number 25763

Date:

September 7, 2006

By:

David E. Bruhn
David E. Bruhn, Reg. No. 36,762
(612) 340-6317